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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO. 90 of 2006

Appellant — Ajmuddin Qureshi @ Ajju Son of Riyazuddin Qureshi about 22 years, Resident of – Kalinagar Pandari Near Gautam Kirana Shop P.S. Civil Line Raipur, Tahsil and District Raipur (CG)

VERSUS

Respondent — State of Chhattisgarh, Through District Magistrate, Raipur, Distt. Raipur (CG)

And

CRIMINAL APPEAL NO. 153 of 2007

Appellants

1. Mohd. Ful @ Javed S/o. Mohd. Naim, Aged about – 23 years, R/o. Motijhil, Kachchi Saraf Chakjasu, P.S. Mithunpara, Distt. Muzaffarpur, Bihar.

2. Mohd. Raju @ Kalamuddin, S/o. Mohd. Shahabuddin @ Hani Painter, aged about 22 years, R/o. near Amar Talkies, Chakjasu, P.S. Mithunpara, Distt. Muzaffarpur, Bihar.

3. Mohd. Ubed @ Kali, S/o. Mohd. Anwar, age 32 year, R/o. Rambagh, Kanhaulidih, P.S. Mithunpara, Distt. Muzaffarpur, Bihar.

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. Mohd. Farukh, S/o. Mohd Kayyum, age 24 years, R/o Kanhaulidih, P.S. Mithunpara, Distt. Muzaffarpur, Bihar.

VERSUS

Respondent State of Chhattisgarh,
Through District Magistrate, Raipur.

Present:
Shri Sunil Sahu, Advocate for the appellant in Cr.A.No. 90/06.
Shri C.R. Sahu, Advocate for the appellants in Cr.A.No. 153/07.
Shri Arun Sao, GA for the State.

ORAL JUDGMENT
(14thSeptember 2007)

Dhirendra Mishra, J

Cr.A.No. 90/06 preferred by appellant Ajimuddin Qureshi @ Ajju & Cr.A.No. 153/07 preferred by appellants Mohd. Ful @ Javed, Mohd. Raju @ Kalamuddin, Mohd. Ubed @ Kali & Mohd. Farukh are being disposed of by this common judgment as both these appeals arise of the impugned judgment dated 30th January 2006 passed in S.T.No. 149/05 whereby learned III Additional Sessions Judge, Raipur has convicted all the appellants under Sections 402 of the Indian

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Penal Code and sentenced each of them to undergo R.I. for five years, pay a fine of Rs.2,000/- and in default of payment of fine to undergo additional R.I. for one year.

2. Charge sheet was filed against the appellants under Sections 399, 402 of the IPC and Section 25 of the Arms Act on the allegation that on 25.2.2005 the crime squad of Raipur received a secret information that five persons have assembled in the house of appellant Azimuddin and are planning to commit dacoity, whereupon the A.S.I. Amol Singh (PW-8) along with Head Constable and other Constables left for the house of appellant Ajimuddin. After reaching his house, they overheard talks of the inhabitants and learnt that they were planning to commit dacoity in the house of any big businessman. After surrounding the house, the accused persons were apprehended and on interrogation they admitted that they have come from Bihar to Raipur to commit dacoity. During investigation a pistol with magazine having five live cartridges and one empty were seized from possession of appellant Mohd. Ful @ Javed under Ex.P/4, one country made revolver with two live cartridges from accused Mohd. Raju @ Mohd. Kalamuddin under Ex.P/5, one country made pistol with two live cartridges from accused Mohd. Umed @ Kali under Ex.P/6, one buttoned

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

knife from accused Mohd. Farukh under Ex.P/7 and one swordstick was seized from accused Ajimuddin under Ex.P/8.

3. After investigation charge sheet was filed against all the accused/appellants under the aforesaid sections. During trial eight witnesses were examined by the prosecution. The accused persons in their statements recorded under Section 313 of Cr.P.C. denied the allegations appearing against them in the prosecution case and pleaded innocence and false implication. However, learned trial Court while acquitting them of charge under Sections 399 of IPC and 25 of Arms Act, convicted them under Section 402 of the IPC and sentenced as mentioned above.

4. Learned counsel for the appellants submit that there is no evidence available on record to show that the accused/appellants were in fact planning to commit dacoity and none of the witnesses has stated that they overheard the accused persons planning to commit dacoity. They were implicated in the said offence on the basis of alleged recovery of weapons, however, the witnesses of recovery have also turned hostile and they have not supported the prosecution case, therefore, the learned trial Court acquitted the accused persons of charges under Section 399 of IPC and Section 25 of the Arms Act. The appellants have been convicted solely on the ground

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that they were arrested from the house of appellant Ajimuddin on 25.1.2005, they could not explain as to in whose marriage they had come from Bihar to Raipur and no evidence could be adduced by Ajimuddin that there was any marriage in his family and they reached there as their guests. Thus, on the basis of above, the learned trial Court held that evidence of the prosecution witnesses stands unrebutted that the accused persons assembled at the house of Ajimuddin for planning to commit dacoity as they were five in number and accordingly, convicted them under Section 402 of the IPC.

5. Learned counsel for the appellant placed reliance on the judgment in the matter of **Chaturi Yadav and others Vs. State of Bihar** reported in **AIR 1979 SC 1412**.

6. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

7. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. In the matter of Chaturi Yadav (supra) the Hon'ble Apex Court while reversing the judgment of conviction under Sections 399 and 402 of IPC in paragraph 4 has held thus:

> "4. The evidence led by the prosecution merely shows that eight persons were found in the school premises. Some of them were armed with guns, some had cartridges and other ran away. The mere fact that these persons were found at 1 A.M. does not by itself, prove that the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object."

9. In the instant case also the allegation is that the appellants were five in number, they had assembled in the house of one of the appellants Ajimuddin, they were overheard by the police party planning to commit dacoity, country made pistols, cartridges and swordstick were recovered from them, they could not give any explanation for their assembly and had allegedly admitted before the police the crime in question. However, there is not an iota of evidence that they were planning to commit dacoity as none of the prosecution witnesses overheard them planning to commit dacoity and the trial Court merely on the ground that the appellants have failed to prove the purpose for which they had come to Raipur from Bihar and assembled in the house of Ajimuddin, has drawn an inference that they had in fact assembled to make a plan for

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

committing dacoity, which is a perverse finding and as such, cannot be sustained.

10. In the result, the appeals are allowed. Conviction of the appellants under Section 402 of the IPC and sentence passed thereon, are set aside. They are acquitted of the above charge. They be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge

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